

***[DRAFT 9/14/2010]***  
***DELTA STEWARDSHIP COUNCIL***  
***ADMINISTRATIVE PROCEDURES GOVERNING APPEALS***

***OPTIONS FOR BDCP STANDARDS OF REVIEW***

1. DE NOVO (Least deferential to DFG).

“The council’s decision shall be de novo, based on its independent judgment in reviewing the applicable law and facts.”

[Current draft language]

2. PREPONDERANCE OF THE EVIDENCE (more likely than not):

Option 2A. The council shall determine, based upon a preponderance of the evidence, whether the department correctly determined that the BDCP meets all of the requirements of Water Code section 85320 for inclusion in the Delta Plan. In reaching its decision, the council shall **take into consideration** the reasoning and factual findings of the department. The council may seek clarification from the department of its reasoning and factual findings prior to the council making its final decision.

Option 2B. The council shall determine, based upon a preponderance of the evidence, whether the department correctly determined that the BDCP meets all of the requirements of Water Code section 85320 for inclusion in the Delta Plan. In reaching its decision, the council shall **give weight to** the reasoning and factual findings of the department. The council may seek clarification from the department of its reasoning and factual findings prior to the council making its final decision.

[Sample language]

3. SUBSTANTIAL EVIDENCE (Most deferential to DFG).

“The council shall determine, based on the applicable law, whether the department correctly determined that the BDCP meets the requirements of Water Code section 85320. The council shall accept the department’s factual findings if supported by substantial evidence in the record before the department considered as a whole.

[Sample language]